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January 31, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 4, 2005

Case Number: TSO-0230

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.^{2/} After reviewing the evidence before me I find the Individual's access authorization should be restored.

I. Background

During a Personnel Security Interview (PSI) held in August 2004, the Individual admitted that she smoked marijuana four times in college while holding an access authorization. Also during the PSI, the Individual stated that at the time she used marijuana, she was not concerned about her access authorization.

The Local Security Office (LSO) issued a Notification Letter to the Individual, citing the incidents described above as derogatory information that created a substantial doubt as to the Individual's eligibility for an access authorization under Criteria K^{3/} and L.^{4/} Criterion K refers to information indicating that an individual has

Trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established

^{1/} 10 C.F.R. Part 710, Subpart A.

^{2/} 10 C.F.R. § 710.5(a).

^{3/} 10 C.F.R. § 710.8(k).

^{4/} 10 C.F.R. § 710.8(l).

pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law.^{5/}

Criterion L refers to information indicating that an individual has

Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility^{6/}

Upon receipt of the Notification Letter, the Individual requested a hearing. The OHA Director appointed me as the Hearing Officer in this case.^{7/} I convened a hearing in this matter.^{8/}

At the hearing, the Individual represented herself, with the assistance of her supervisor, who also testified on her behalf. The Individual offered the testimony of two other supervisors, her sister, her father, and herself. The Local Security Office did not present any witnesses. The local DOE Office entered 13 exhibits into the record. The Individual entered 2 exhibits into the record. Below is a summary of the testimony presented at the Hearing.

II. Hearing Testimony

A. The Individual

At the hearing, the Individual testified that she made a mistake in smoking marijuana four times during college. Hearing Transcript (Hrg. Tr.) at 6. She has not used marijuana since April 2002 and will not use it in the future. *Id.* The Individual described her marijuana

^{5/} *Id.* at § 710.8(k).

^{6/} *Id.* at § 710.8(l).

^{7/} 10 C.F.R. § 710.25(a), (b).

^{8/} 10 C.F.R. § 710.25(g).

usage. She had been a summer intern at a DOE facility. *Id.* at 7. During the summer, she was granted her access authorization. *Id.* She resigned her job and returned to college. However, she maintained her access authorization as a non-employee. She used marijuana nine months after she left DOE when she was not employed by DOE. *Id.*

The Individual stated that when she used the marijuana, she just was not thinking about DOE and its policies. Hrg. Tr. at 47. She testified that she knew using the drug was illegal. *Id.* She was focused on her schoolwork and did not think about her access authorization. *Id.* When DOE Counsel asked why she did not just lie on the Questionnaire for National Security Position (QNSP) because DOE would probably not have found out, she stated that she was not going to lie. *Id.* She testified that on her first QNSP, she told the truth about possession of alcohol when she was a minor. *Id.* She did think the fact that she had used marijuana would effect her eligibility for an access authorization.

The Individual stated she did not want to lie. Hrg. Tr. at 48. She testified that during the PSI she stated she did not care about her access authorization. *Id.* When asked to explain her answer during the PSI that she “just didn’t care” about her access authorization, she stated that it was not emphasized to her that she was not permitted to use marijuana while having an access authorization, but not employed by DOE. *Id.* at 46. Rather, she believed she was accountable to keep anything she had learned during her employment confidential. *Id.* The Individual did not believe that the other restrictions applied to her. *Id.* Further, she did not intend to return to DOE to work after she graduated from college, so the access authorization was not crucial to her. *Id.* at 54.

B. The Individual’s Direct Supervisor

The Individual’s direct supervisor testified on her behalf. He stated that he has known the Individual on a daily basis for two years and her family for approximately 20 years. Hrg. Tr. at 9. He stated that the reason he hired the Individual was because she is enthusiastic and is very proactive in what she wanted to pursue in her career and personal life. *Id.* at 9-10. The Individual has fit into the organization quickly and well. *Id.* at 10. She understands what the organization is trying to do. *Id.* She is creative. *Id.* She has handled sensitive information about various other employees in a confidential manner. *Id.* The supervisor testified that the Individual is a very reliable and trustworthy person. *Id.* at 16. When asked about her statement during the PSI that she “just didn’t care” about the access authorization, the supervisor stated that did not sound like the Individual at all. *Id.* at 20. The supervisor testified that he trusts her in every situation. *Id.* He also testified about the exit procedure. He has hired a number of student interns for the DOE. *Id.* at 17. When the Individual was working as a student intern, the process was to tell students not to share what was learned at DOE with anyone. *Id.* That process has since been changed to provide students more information about their obligation as access authorization holders while at college.

Finally, he testified that it is totally out of character for the Individual not to care about something. *Id.* at 37. He believes that she takes responsibility for all projects assigned to her. *Id.*

C. The Individual's Second Supervisor

The Individual's second supervisor testified that the Individual has a lot of energy and is extremely professional. Hrg. Tr. at 23-24. She is a team player. *Id.* at 24. The supervisor was surprised when told why the Individual's access authorization was suspended. *Id.* at 25. She believes that the Individual's marijuana usage was for a short duration and isolated. *Id.* The supervisor does socialize with the Individual occasionally and has never seen her under the influence of drugs or alcohol. *Id.* at 24. The supervisor testified that she trusts the Individual every day. *Id.* She stated that the Individual is an amazing young woman. *Id.* at 30. The supervisor is unclear about the process for student interns returning to school. *Id.* at 25. The Individual's honesty on her QNSP is remarkable. *Id.* She does not believe the policy regarding a student being bound by the security clearance while at school, but not working for DOE, was in effect when the Individual was a student intern. *Id.* at 29.

D. The Individual's Third Supervisor

A third of the Individual's supervisors testified that he sees the Individual every day. Hrg. Tr. at 31. He has known her two years since she started working at her present employment. *Id.* She has a great attitude in the office. *Id.* at 32. She always works hard. *Id.* She is a team player and enthusiastic. *Id.* The supervisor has no reason to doubt her honesty or integrity. *Id.* She maintains information confidentially. *Id.* She is very discreet and hard-working. *Id.* The Individual is not the type of person not to care. *Id.* at 35. She does care; she cares deeply. *Id.* She is committed to the office's work. *Id.*

The supervisor also testified about the current exit interview and form for exiting student interns. *Id.* at 36. Currently, there is a statement on the form that indicates that the student is bound by all parts of the access authorization. *Id.* Now, that statement is in red ink. *Id.* It was not on the form when the Individual was working at DOE. *Id.*

E. The Individual's Sister

The Individual's sister testified that she speaks to her sister daily and sees her two to three times a week. Hrg. Tr. at 39. They spend time together shopping or at the Individual's house with their dogs. *Id.* They also have dinner and attend the movies together. *Id.* The sister testified that the Individual has strong morals. *Id.* The majority of her friends are family oriented. *Id.* She would never suspect her of smoking marijuana. *Id.* The Individual is happy and in control of her life. *Id.* The sister testified that she trusts her with her life and believes that they talk about everything. *Id.*

F. The Individual's Father

The Individual's father testified that both he and his wife, the Individual's mother, are employed by DOE and maintain access authorizations. Hrg. Tr. at 40-41. The Individual was raised in a very stable family. *Id.* at 41. She was taught to be honest and forthright. *Id.* She always displayed a hard work ethic and accomplished her goals. *Id.* In high school, she graduated in the top ten percent of her class. *Id.* She makes friends easily and displays good leadership skills. *Id.* The Individual did well in college. *Id.* He never noticed any behavior that indicated the Individual was using illegal drugs. *Id.* Her parents would visit monthly when she was in college and she always portrayed a positive attitude. *Id.*

The father testified that he knows her character well enough to know if she were under the influence of either drugs or alcohol. *Id.* She is not using drugs now. *Id.* The few times that she tried marijuana in college were isolated instances. *Id.* They are not representative of an ongoing problem. *Id.* The Individual enjoys a stable life. *Id.* She owns her own home, her own car, and her own pets. *Id.* at 42. She has a strong relationship with a young man her own age. *Id.* She is positive about working at DOE, about her work assignments, and the management team she works for. *Id.* She feels valued and respected. *Id.* The Individual has displayed a tremendous amount of remorse during this process. *Id.* When asked by DOE Counsel, the father testified that he believes his daughter did not understand the question about her drug usage and about what she was thinking as she was using the marijuana. *Id.* at 43-44. She stated during the PSI that she "just didn't care." He stated that she does care about DOE policies. *Id.* at 43. She has always been a reliable, dependable person. *Id.* She is very conscientious about her present situation. *Id.* He knows his daughter cares about security. *Id.* Her father testified that for a time, while the Individual was in college, she struggled about where she would go after college. *Id.* at 42. She was hesitant about going back to work for DOE. *Id.*

III. Standard of Review

Under Part 710, DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility."^{9/} After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest."^{10/}

^{9/} 10 C.F.R. § 710.10(a).

^{10/} See 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in the regulations: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.^{11/} After consideration of all the relevant information in the record, I conclude that a significant security concern was raised by the derogatory information. However, for the reasons discussed below, it is my decision that the Individual's access authorization should be restored.

IV. Findings and Conclusions

With regard to Criterion K, the Individual admitted that she used marijuana approximately four times between April 2001 and April 2002, while she was holding an access authorization. With regard to Criterion L, the Individual's words at the PSI indicate that she did not care that she held the access authorization when she used marijuana. Therefore, I believe that both Criteria K and L were properly raised by the LSO.

After a question concerning an individual's eligibility for an access authorization has been properly raised, as it has in this case, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest."^{12/}

A. Criterion K

I believe that the Individual has mitigated the concern regarding Criterion K. She has not used marijuana since April 2002. She self-reported her marijuana usage. She only used marijuana approximately four times and that usage was three years prior to the date of the hearing.

Further, at the time she used marijuana, she was holding an access authorization but was not working for DOE. I do not believe that her responsibilities regarding her access authorization were clearly explained to her during the separation process. The current separation form highlights in red ink that all aspects of an individual's access authorization

^{11/} 10 C.F.R. § 710.7(c).

^{12/} See 10 C.F.R. § 710.27(a).

apply, even when the person is not working at DOE but going to school. During the PSI, the PSS stated that the separation form she showed to the Individual was a new form. At the Hearing, the Individual provided the actual forms she signed when separating from DOE. The language that is currently contained on the form in red ink does not appear on the form that the Individual signed. Further, I was convinced by the Individual and her witnesses that the Individual has for the last three years followed all security rules.

B. Criterion L

I find that the Individual has mitigated that concern as well. She was honest on her QNSP. At the PSI, she was understood to say that she did not care about her access authorization when she used marijuana. At the Hearing, she stated that she does care about DOE policies and regulations. Further, all of her witnesses testified repeatedly that she works hard to follow DOE policies. She is a well-respected employee who is conscientious and enthusiastic about what she does. She takes her security responsibilities seriously.

Also, the Individual was very nervous during the hearing, more nervous than I have seen an individual at a hearing previously. I believe that she would have been as nervous during the PSI, leading her to say things that she just did not intend. In the PSI, she stated that, while she was at school, she did not expect to return to DOE after she graduated. She reiterated that statement at the Hearing. She did not have a good experience the first two years she worked as a summer intern. By her third summer at DOE, her duties had changed and she enjoyed herself. All her marijuana usage was prior to her third year as a summer intern, prior to when she thought she might actually work at DOE full time.

The DOE Counsel asked the Individual about her statement that she “just didn’t care” about her access authorization. In reading the entire transcript, and especially the rest of that particular statement, the Individual stated “I guess I didn’t care at the time, just ‘cause I wasn’t planning on continuing employment so I figured, you know, after my senior year I would just, I don’t know.” I believe that the Individual did not intend to return to work at DOE again, and therefore, was not concerned about her access authorization when she used marijuana. Further, I believe that the separation papers that she signed were not clear as to what was expected of her as an access authorization holder while she was at school and not employed by the DOE. The Individual has convinced me she is a dedicated individual, who will follow all DOE security rules.

V. *Conclusion*

Upon consideration of the record in this case, I find the LSO properly raised the concerns regarding Criteria K and L but that those security concerns have been mitigated. Therefore, I conclude that restoring the Individual’s access authorization would not endanger the common defense and security and would not be clearly inconsistent with

the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should be restored. The Manager of the LSO or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28(b)-(e).

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: January 31, 2007